No. 88-539

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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

JAMES E. POOLE, JR., ET. AL.,

Appellants,

v.

EMMA GRESHAM, ET. AL.,

Appellees.

ON APPEAL FROM A THREE-JUDGE PANEL OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA

MOTION TO DISMISS OR AFFIRM

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The State Defendants-Appellees, Joe Frank Harris, Michael J. Bowers, Russell N. Sewell, Max Cleland, and State Election Board, and the Local Defendants-Appellees, Burke County Board of Registrars, Weston Fortson, W. E. Bessent, John M. Moseley, Burke County Board of Elections, Ralph B. Willis, Michael M. Searles, and Morris Green, move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the three-judge panel of the United States District Court of the Northern District of Georgia on the ground that it is manifest that

the question presented by this appeal is so unsubstantial as to need no further argument.

I.

STATEMENT OF THE CASE

The Town of Keysville, located in Burke County, Georgia, was incorporated in 1890 with corporate limits extending one-half mile in every direction from the schoolhouse located there. Ga. Laws 1890-91, Vol. II, p. 657. The schoolhouse upon which the boundaries was established was destroyed in approximately 1895. There is apparently no living person who knows where the old schoolhouse was located in 1890. The charter for the Town of Keysville requires that a mayor and five councilmembers be elected for one-year terms on the first Monday in January of each year.

At some point during the 1930's the Town of Keysville ceased to elect persons to fill these municipal offices. Consequently, the government of the Town of Keysville remained inactive for many years despite the fact that Keysville continues to be a current municipality in the State of Georgia. In approximately 1985, numerous citizens of the Town of Keysville began efforts to reactivate the municipality. Due to the fact that the laws of the State of Georgia did not contemplate a situation such as the one existing in the Town of Keysville in which the town simply decided to cease performing governmental functions, the citizens of the Town of Keysville experienced difficulty in restarting the municipality.

In 1987, the Georgia Assembly enacted a law to deal with the situation existing in Keysville. Ga. Laws 1987, p. 178. That provision of law, codified as O.C.G.A. § 36-30-13, provided that, in the event that all seats on the governing authority of a municipality are vacant, the election superintendent of the county shall have the authority to call for a special election to fill the vacant offices and to conduct or to appoint someone to conduct an election to fill the vacancies. In addition, the board of registrars of the county must prepare the electors list for the election. In interpreting this provision of law, the Georgia Attorney General's Office instructed the Secretary of State that the duty to call for the election to fill the vacancies was mandatory on the county election superintendent.

Based upon this law and this advice, the Election Superintendent of Burke County called for an election to be held on January 4, 1988, to fill the vacancies existing on the governing authority of the Town of Keysville. The Board of Registrars of Burke County prepared an electors list for use in the election. The call and a map depicting the municipal boundaries, as determined by the Burke County Tax Assessor, were submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c) for preclearance. The Attorney General reviewed the submission and precleared the election to be conducted in conformance with the submitted material, including the map depicting the municipal boundaries of the Town of Keysville.

On December 30, 1987, certain citizens of the Town of Keysville, who are the Appellants herein, sought an

injunction from the Superior Court of Burke County to enjoin the conduct of the January 4, 1988, election. By order entered on December 31, 1987, the Superior Court of Burke County enjoined the county defendants "from undertaking any actions with regard to the scheduling or conducting of municipal elections until such time as the municipal boundaries for the town of Keysville have been properly delineated in accordance with the requirements of law."

On December 31, 1987, the Plaintiffs-Appellees, in response to the order of the Superior Court of Burke County, sought a temporary restraining order from the District Court to enjoin the enforcement of the order of the Superior Court of Burke County until such order was precleared in accordance with Section 5. The District Court granted the request for a temporary restraining order and permitted the election to be conducted on January 4, 1988.

A hearing was subsequently conducted before a three-judge panel of the District Court on the same issues and a preliminary injunction was issued continuing to enjoin the implementation of the Superior Court order until and unless the order was precleared. Upon agreement of the parties, the three-judge panel considered the issue of a permanent injunction based upon the record presented at the hearing on the preliminary injunction. On June 30, 1988, the three-judge panel issued a permanent injunction against the implementation and enforcement of the order of the Superior Court until and unless such order is precleared. From this decision, the Appellants have brought this appeal.

II.

ARGUMENT

The question presented by the Appellants in this case is whether a state court order which, in enforcing previously precleared state election law, enjoins or delays a pending election until such time as state election law is complied with, is subject to preclearance under Section 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c) before such order may be enforced. However, this question misstates the issue before the three-judge panel of the District Court which is now before this Court.

There is no disagreement among the parties with the principle that court orders enforcing previously precleared provisions of state law do not require preclearence in order to be effective. However, despite the characterization by the Appellants in this case, the order of the Superior Court of Burke County did not effectuate or enforce previously precleared provisions of state law. On the contrary, the order of the Superior Court of Burke County, if given effect, would result in the violation of a previously precleared practice and procedure. If given effect, the order of the Superior Court of Burke County would result in an alteration of the date of the election and the municipal boundaries of the Town of Keysville, both of which received preclearence by the Attorney General under Section 5.

The provisions of Section 5, as they apply to the State of Georgia, prevent the State of Georgia and its political subdivisions from enacting or seeking "to administer any voting qualification or prerequisite to voting, or standard,

practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," until and unless such qualification, prerequisite, standard, practice, or procedure has first been precleared either by a declaratory judgment of the District Court for the District of Columbia or by submitting the proposed change to the Attorney General of the United States.

Section 5 has been interpreted broadly to apply to all changes in laws, practices, and procedures different from those in effect on November 1, 1964, regardless of how minor the change is. In *Allen v. State Board of Elections*, 393 U.S. 544 (1969), this Court stated that the phrase "standard, practice, or procedure" must be given the "broadest possible scope." Subsequent cases have continued to underscore the broad scope of Section 5. *See, e.g., Perkins v. Matthews*, 400 U.S. 379 (1971); *Georgia v. U.S.*, 411 U.S. 526 (1973); *U.S. v. Board of Commissioners of Sheffield, Alabama*, 435 U.S. 110 (1978); *Dougherty County Board of Education v. White*, 439 U.S. 32 (1978).

The reach of Section 5 has also been given broad interpretation. This Court has not limited the application of Section 5 to merely states and their political subdivisions. This Court has held that Section 5 applies to all entities having power over any aspect of the electoral process within a jurisdiction subject to the preclearence requirements of Section 5. *See, e.g., U.S. v. Board of Commissioners of Sheffield, Alabama, supra; Dougherty Board of Education v. White, supra.* In 1982, this Court included orders of a state court within the reach of Section 5. *Hathorn v. Lovorn*, 457 U.S. 255, 265 (n.16) (1982) (" . . . a

state court decree directing compliance with a state election statute contemplates 'adminis[ration]' of the state statute within the meaning of § 5.")

The Appellants have characterized the decision of the Superior Court of Burke County as merely a "delay" in the date of the election which does not constitute a "change" under Section 5. The Appellants argue that the delay of the date of the election does not alter any election procedures and is not a permanent change which falls within the provisions of Section 5. Such arguments are wholly without merit.

This Court in deciding *NAACP v. Hampton County Election Commission*, 470 U.S. 166, 178 (1985), answered both of these arguments contrary to the position of the Appellants. In that case, this Court found that the rescheduling of the date of an election is a change under Section 5. In addition, this Court found that the fact that a change is not permanent does not exempt the change from Section 5 preclearence and stated that the "Voting Rights Act reaches changes that affect even a single election."

Therefore, the decision of the three-judge panel of the District Court is correct in its finding that the order of the Superior Court of Burke County cannot be given effect until and unless the order is precleared under the provision of Section 5.

CONCLUSION

This case presents no novel arguments concerning either the application or the reach of Section 5. The existing precedents of this Court answer every argument presented by the Appellants. Consequently, there are no substantial arguments for review by this Court and the decision of the three-judge panel should be affirmed or, in the alternative, the appeal should be dismissed.

Respectfully submitted,

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